

Dryden Policy Directive

Effective Date: April 2, 1999

Expiration Date: April 2, 2004

RESPONSIBLE OFFICE: A/Acquisition Management Office

SUBJECT: Support Service Contracting

1. POLICY

Support services contracts (which are authorized under general contracting authority), are not to be used to create employer-employee relationships between Government and contractor employees, or to transfer inherently governmental functions to the commercial sector.

2. APPLICABILITY

The provisions of this directive are applicable to all contractor and civil service employees at Dryden Flight Research Center. The enclosed checklist, "Personal vs. Non-personal Services Guide", should assist personnel in determining what actions or relationships violates this policy.

3. RESPONSIBILITIES

A. The Contracting Officer shall ensure that when a contract is entered into, all requirements of law, executive orders, regulations, and all other applicable procedures (including clearances and approvals) have been met.

B. When the contract is awarded, the Contracting Officer and the Contracting Officer's Technical Representative (COTR) are responsible to ensure that appropriate control is preserved.

C. Directorate Chiefs are responsible for providing qualified individuals to function as COTRs and Alternate-COTRs on support service contracts. These individuals are to be available for training by the Acquisition Management Office. When appointed by the Contracting Officer, they are to be allotted an appropriate amount of time to perform proper administration of the contract pursuant to the terms of their appointment letter.

4. DEFINITIONS

A. "Support Service Contract" - means a contract wherein what is contracted for is a service or support of the installation or its mission that is continuous in nature. These contracts are often referred to as "Non-Personal Services" contracts because when written and administered correctly, the personal services of specific individuals are not required by the Government. There is typically not a discrete deliverable required under a support service contract.

Support services at Dryden involve direct flight mission support, other facility operations, institutional support services, technical engineering, and research support services, and contracts for advisory and assistance services.

B. "Inherently governmental function" - means a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories (1) the act of governing (that is, the discretionary exercise of Government authority), and (2) monetary transactions and entitlements.

The appendices to OFPP Letter 92-1 provide information to assist personnel in making determinations of inherently governmental functions. This information includes (a) an illustrative list of functions considered to be inherently governmental functions; and (b) a list of services and actions that are not considered to be inherently governmental functions, but they approach being in that category because of (i) the way in which the contractor performs the contract, or (ii) the manner in which the Government administers contractor performance.

C. "Employer-employee relationship" - means that a contractor employee is subject to the relatively continuous supervision and control of one or more Government employees. This could occur as a result of (1) a contract's terms, or (2) the manner of a contract's administration during performance. If a government employee supervises the performance of a contractor's employee, the contractor employee becomes, in effect, the employee of the government. This violates section 203(c)2 of the National Aeronautics and Space Act, which requires that NASA employees be appointed in accordance with Civil Service laws.

An employer-employee relationship is formed by who controls the contractor employee's manner of performance. The nature of the work, per se, does not determine whether an employer-employee relationship exists; rather, it is the

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administration and performance of the work (as evidenced by actual physical conduct, manner, and means) that is determinative. Each contract arrangement is judged upon its own facts and circumstances. The key question is always: Does the Government need to exercise relatively continuous supervision and control over the contractor personnel performing the contract. Is the answer yes? Then there is, or will be, an employer-employee relationship between the contractor and civil service staff (which is prohibited).

5. REFERENCE

OMB Circular No.A-76, dated August 30, 1977, Performance of Commercial Activities

OMB Circular No. A-120, Guidelines for the Use of Advisory and Assistance Services

OFPP Policy Letter 92-1, Inherently Governmental Functions

FAR Subpart 1.6, Contracting Authority and Responsibilities

FAR Part 37, Service Contracting

NFS Part 18-37, Service Contracting

Kevin L. Petersen
Director

PERSONAL VS. NONPERSONAL SERVICES GUIDE

For Government employees working with on-site support service contractor personnel.

YES	NO	
___	___	Are contractor personnel making decisions that should be made by the Government (i.e., inherently governmental)?
___	___	Do you control in any way the method in which the contractor performs the service?
___	___	Do you routinely and directly assign tasks and/or prepare work schedules for contractor employees?
___	___	Do you supervise, directly or indirectly, the work of the contractor employees; OR retain the right to do so?
___	___	Do you participate in the recruitment, hiring, or firing of contractor personnel?
___	___	Do you participate in performance evaluations of individual contractor employees?
___	___	Are contractor employees in any way integrated into the Government's organizational structure?
___	___	Can contractor employees be used interchangeably with Government personnel to perform the same functions?

If the answer to any of the above questions is "yes", you are most likely in violation of laws and regulations against the use of personal services. Consult your **Contracting Officer or the Acquisition Management Office Chief immediately for guidance.**